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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>JOHN THOMAS, JR. et al.,<br><br>Defendants and Appellants | F056595<br><br>(Super. Ct. Nos. BF116603A and BF116603B)<br><br>**OPINION** |

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Jerry D. Whatley, under appointment by the Court of Appeal, for Defendant and Appellant John Thomas, Jr.

Rebecca P. Jones, under appointment by the Court of Appeal, for Defendant and Appellant Johnte Devon Allen.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellants John Thomas, Jr., and Johnte Devon Allen (Thomas and Allen, respectively; collectively, appellants) stand convicted, following a jury trial, of first degree murder perpetrated during the commission or attempted commission of robbery, burglary, and carjacking (Pen. Code,[1] §§ 187, subd. (a), 189, 190.2, subds. (a)(17)(A), (G) & (L); count 1), attempted premeditated murder (§§ 187, subd. (a), 189, 664; count 2), assault with a firearm (§ 245, subd. (a)(2); counts 3 & 4), attempted robbery in an inhabited dwelling (§§ 212.5, subd. (a), 664; count 5), attempted carjacking (§§ 215, subd. (a), 664; count 6), robbery in an inhabited dwelling (§ 212.5, subd. (a); counts 7 & 8), and carjacking (§ 215, subd. (a); count 9). As to counts 1 and 2, the jury found that appellants personally and intentionally discharged a firearm, proximately causing great bodily injury or death (§ 12022.53, subd. (d)); as to counts 3 and 4, that appellants personally used a firearm (§ 12022.5, subd. (a)); and as to counts 5-9, that appellants personally and intentionally discharged a firearm (§ 12022.53, subd. (c)). The People elected not to seek the death penalty, and, upon appellants' convictions, dismissed criminal street gang enhancement and special circumstance allegations (§§ 186.22, subd. (b), 190.2, subd. (a)(22)) that had been bifurcated for trial. Thomas was sentenced to a total unstayed term of life in prison without the possibility of parole plus 25 years to life, plus life, plus 44 years 6 months. Allen was sentenced to a total unstayed term of life in prison without the possibility of parole, plus life plus 25 years to life, plus 44 years 6 months. Both now appeal, raising claims of instructional and sentencing error.[2] For the reasons that follow, we will affirm.

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[1] All statutory references are to the Penal Code.

[2] Each joins in the issues raised by the other.

## FACTS

### I

### PROSECUTION EVIDENCE

A little after midnight on October 19, 2006, Ty Scherer, Jesse Harkleroad, Zackary Schmidt, and Randy Ayers were seated at a table in the garage of Nicolas Bolen's residence on Emery Avenue in Bakersfield. They were drinking and playing cards, while Bolen was throwing darts. Bolen's wife, Ava Del Rosario, and their two children were inside the house.

The main garage door was open, and two African-American males who were strangers to the group walked up. One, whom Scherer and Bolen identified at trial as Thomas, was wearing a black sweatshirt. The other, whom Scherer and Bolen identified at trial as Allen, was wearing a red sweatshirt.[3]

Schmidt, who was seated at the head of the table with a view toward the street, rose and asked what was going on. Appellants demanded the keys to the white car in the driveway. Bolen thought it was some kind of a joke, but then Allen pulled a small revolver and Thomas pulled a small semiautomatic pistol. They continued to demand the keys and told Schmidt to sit down, which he did. Scherer recalled Allen saying to Schmidt as the two walked up, "'Don't I recognize you?'" Schmidt did not remember at what point one spoke to him, but one kind of waved the gun toward him and asked, "'Don't I know you from somewhere?'" Schmidt glanced up, said, "'No, I don't know you from anywhere,'" and looked right back down. He deliberately looked down and not at their faces because he did not want to give them an excuse to shoot.[4]

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[3] Schmidt also identified appellants at trial, but could not recall what they were wearing or specifically who did what.

[4] Bakersfield Detective Caldas interviewed Schmidt on October 27, 2006, while the latter was still in the intensive care unit at Kern Medical Center. Schmidt told Caldas that after Bolen was taken into the house, the person who stayed outside was swinging his gun

Bolen said the white car was his. While Thomas remained with his gun pointed at the table, Allen went over to Bolen, pointed the gun at his face, and again demanded the keys. Bolen, who did not have them on his person, asked to go inside to try and find them. Allen agreed and took Bolen inside. Everyone else remained in the garage. Thomas was still standing in front of the garage. Scherer told him to put down the gun and fight like a man, but Thomas responded that he was not that stupid.

Del Rosario, who had heard loud voices in the garage, opened the door as Bolen and Allen were walking up to it. Allen pointed his gun at Del Rosario and demanded the keys. She said she did not know where they were, and she emptied out her purse to show she did not have them. She took out her wallet and set it on the counter, and Allen grabbed it and put it in his pocket. He then ordered Del Rosario to lie down and stop looking at him. Bolen searched for the keys, then told Allen he did not know where they were. Allen ordered him to get on the ground as well. Bolen complied. His two-year-old daughter walked into the hallway, and Allen went back outside.

Allen returned to the garage and again demanded keys to the car, so Ayers pulled out the keys to his father's red Dodge pickup and handed them over. He and the other card players were still seated. Immediately after Ayers handed over the keys, one of the perpetrators pointed at Schmidt and opened fire. Schmidt was struck once, in the chest. He was hit by the first shot, but several more shots were fired. Both appellants fired. Schmidt saw blood squirt from Harkleroad's chest and saw him coughing blood onto the table. Only a few minutes had passed since appellants walked up.

Scherer got up and walked out of the garage. Harkleroad also walked out, then fell. Appellants ran to the truck, which was parked on the street in front of the house.

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back and forth and said that it was not a game. The person then pointed the gun at Schmidt and said, "'Don't I know you? I know you from somewhere, don't I?'" Schmidt said the person looked a little familiar and could have been a younger classmate from high school.

Bolen, who had grabbed his shotgun when Allen left the house, ran outside to see them already in the truck, trying to start it. He fired two shots and hit the truck above their heads. They drove off, heading west on Emery Avenue. Bolen saw them turn up Balboa and then head toward Planz. The police were called and arrived within minutes.

As Bakersfield Police Officer Blackburn responded to the scene, he saw a pickup that matched the description of the vehicle in which the suspects had fled, in the parking lot of Planz Park. It was the only vehicle there. Blackburn had been paying attention to vehicles as he responded, in order to locate possible suspects. He did not see anyone else either in the park or on the streets in the area.

When Blackburn pulled into the lot and approached the truck, he saw a male wearing a red sweatshirt running through the park, away from the Dodge pickup and toward a tree line. Blackburn broadcast a description, then turned his attention to the vehicle. When he ascertained that no one was inside, he looked back toward the person in the red sweatshirt. He no longer saw this person, but did see a male in a black sweatshirt running toward the tree line near where Blackburn had first seen the subject in the red sweatshirt. Blackburn did not give chase, but instead maintained what would become the north perimeter of the park and broadcast the updated information. Just over a minute elapsed between the time Blackburn heard the first dispatch regarding shots fired to when he saw the truck.

As Bakersfield Police Officer Dossey was responding, he heard Blackburn's transmission about subjects running southbound through the park. Since they were running in his direction, he exited his patrol vehicle and ran along the railroad tracks that were at the southeast portion of the park, hoping to cut off the subjects. He did not observe anyone initially, but then heard a banging noise and saw someone climbing over a fence into the backyard of 3605 Balboa Drive. The person appeared to be an African-American male wearing very dark clothing. Dossey broadcast his location and followed him over the fence. The person ran into the garage at 3605 Balboa. Once other officers

arrived, they entered the garage and took Thomas into custody. He was unarmed. Dossey subsequently located two white T-shirts, one inside the other, on the ground in front of the garage at 3605 Balboa, and a red sweatshirt at the base of a bush by the front entryway of 3601 Balboa, the house just north of 3605.

Dossey continued to search for the other suspect and the firearms. Approximately 10 to 15 minutes after he located Thomas, he saw what appeared to be a human body lying between the fence and a shed in the backyard of 3609 Balboa, the first address south of 3605 Balboa. The person, who was subsequently determined to be Allen, had his hands underneath his chest and his head buried in tall grass. Dossey arrested him. When he and another officer picked Allen up off of the ground, Del Rosario's wallet was found underneath where his stomach had been. Allen was not wearing any type of shirt.

Meanwhile, Harkleroad was pronounced dead at the scene. The cause of death was a gunshot wound to the base of his neck. The bullet transected the trachea, aorta and left lung. Ayers was struck in the back with a ricochet, but it left only a small red mark on his shoulder blade and did not penetrate his skin. Scherer was shot in the arm. The bullet that struck Schmidt collapsed a lung, hit his left ventricle, hit his diaphragm, hit his liver three times, and shredded his colon. Three .22-caliber shell casings were recovered from the driveway.

Allen and Thomas were transported to an in-field showup at which Scherer and Bolen separately identified them. Their identifications were made immediately upon seeing each suspect. Officers searched the backyards of several residences, including the one at 3605 Balboa. No guns were found.

In November 2006, Gaylon McKnight was working at 3605 Balboa, when he and a coworker found two guns under the weeds behind the garage. One was a .22-caliber Beretta semiautomatic pistol with two live rounds in the magazine and a third in the chamber. The other was a .38-caliber revolver containing four live rounds and a spent cartridge. A bullet removed from Harkleroad's body could not be identified or excluded

as having been fired from the .22. However, the shell casings found in Bolen's driveway were fired from that gun. A bullet removed from Schmidt was determined to have been fired from the .38. No fingerprints were found on the guns, and gunshot residue tests yielded negative results for both appellants. No fingerprints of comparison value were found on the red Dodge pickup.

## II

## DEFENSE EVIDENCE

Allen testified that in October 2006, he lived within an easy walk of Planz Park. He was home all day the day before he was arrested, then left between 11:30 and 12:00 at night. Allen, who admitted having a drug problem at the time, had been drinking and using PCP ("KJ"). He was "pretty high." He started walking toward the park, as he had telephoned his girlfriend and told her to pick him up there.

Once at the park, Allen saw Thomas. He also saw three other African-American men whom he did not know and who appeared to be together. Allen approached them, and they asked if he wanted to smoke some more KJ. He agreed; they smoked a little and talked, then they left. Allen, who was wearing jeans and a white tank top, continued to wait for his girlfriend, but she never came. Everything started to blur and he could not remember much that happened, but he recalled hearing some gunshots. That snapped him back into reality, and he jumped into some bushes. He was paranoid because of the drugs.

A few minutes later, a red truck drove into the park, going the wrong way. Two or three people hopped out, and two started running toward Allen. He did not see any law enforcement officers at the time, although a light that could have been police flashed through the park. As he saw the people from the truck running toward him, he hopped over a gate and ran. He did not know exactly where he went and could not explain why he did not run home, and he had no recollection of what happened until the police started beating him and talking about him killing someone. He had no recollection of having a

wallet underneath him when he was arrested. He did not know what happened to the people who got out of the truck.

## DISCUSSION

### I

### INSTRUCTIONAL ERROR[5]

### A. Felony-Murder Instructions

In instructing on felony murder pursuant to CALCRIM Nos. 540A and 540B, the trial court made no mention of the requirement that the act causing death and the felony must be part of one continuous transaction.[6] Subsequently, in instructing jurors on the felony-murder special circumstances pursuant to CALCRIM No. 730, the court told jurors that in order to prove the special circumstances were true, the People had to prove,

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[5] The People asserted appellants were guilty of first degree murder based on theories of premeditation and felony murder. The trial court instructed on both and told jurors that they could not convict appellants of first degree murder unless all jurors agreed the People had proved appellants committed the crime, but that they did not have to agree on the theory.

We can tell, from the true findings on the special circumstance allegations, that jurors unanimously accepted the felony-murder theory. With respect to premeditation, count 1 of the information charged that appellants murdered Jesse Harkleroad "willfully, unlawfully, deliberately, and with premeditation and malice aforethought" in violation of section 187, subdivision (a), but then separately alleged as an "enhancement" that the murder was committed with premeditation and deliberation within the meaning of section 189. The verdict forms for count 1 did not contain a separate finding as to premeditation, but instead were worded so that jurors found appellants guilty of murder "as charged in the first count of the Information" and fixed the degree as murder in the first degree. Because there were two means by which jurors could have found first degree murder and the verdicts contained no express finding of premeditation, we cannot be completely certain jurors also unanimously accepted the premeditation theory, although we think it highly probable they did so.

[6] CALCRIM No. 540A applies where the defendant allegedly committed the fatal act. CALCRIM No. 540B applies where a coparticipant allegedly committed the fatal act.

inter alia, that "the act causing the death and the robbery, burglary and/or carjacking or attempted robbery, burglary and/or carjacking were part of one continuous transaction." However, the court omitted CALCRIM No. 549, which would have told jurors:

> "In order for the People to prove that the defendant is guilty of murder under a theory of felony murder [and that the special circumstance of murder committed while engaged in the commission of ___ <*insert felony*> is true], the People must prove that the ___ <*insert felony*> [or attempted ___ <*insert felony*>] and the act causing the death were part of one continuous transaction. The continuous transaction may occur over a period of time and in more than one location.
>
> "In deciding whether the act causing the death and the felony were part of *one continuous transaction*, you may consider the following factors:
>
> "1. Whether the felony and the fatal act occurred at the same place;
>
> "2. The time period, if any, between the felony and the fatal act;
>
> "3. Whether the fatal act was committed for the purpose of aiding the commission of the felony or escape after the felony;
>
> "4. Whether the fatal act occurred after the felony but while [one or more of] the perpetrator[s] continued to exercise control over the person who was the target of the felony;
>
> "5. Whether the fatal act occurred while the perpetrator[s] (was/were) fleeing from the scene of the felony or otherwise trying to prevent the discovery or reporting of the crime;
>
> "6. Whether the felony was the direct cause of the death;
>
> "AND
>
> "7. Whether the death was a natural and probable consequence of the felony.
>
> "It is not required that the People prove any one of these factors or any particular combination of these factors. The factors are given to assist you in deciding whether the fatal act and the felony were part of one continuous transaction."

Appellants now say the trial court erred by omitting the "one continuous transaction" requirement from CALCRIM Nos. 540A and 540B, and that the error is of constitutional dimension, because it had the effect of removing from the jury the factual question whether the killing and the felony were part of one continuous transaction. We disagree.

"Penal Code section 189 provides that any killing committed in the perpetration of specified felonies, including robbery, [burglary, or carjacking,] is first degree murder. Under long-established rules of criminal complicity, liability for such a murder extends to all persons 'jointly engaged at the time of such killing in the perpetration of or an attempt to perpetrate the crime of robbery'[, burglary, or carjacking] [citation] 'when one of them kills while acting in furtherance of the common design.' [Citation.]" (*People v. Pulido* (1997) 15 Cal.4th 713, 716, fn. omitted.) "First degree felony murder does not require proof of a strict causal relation between the felony and the homicide, and the homicide is committed in the perpetration of the felony if the killing and the felony are parts of one continuous transaction. [Citations.]" (*People v. Ainsworth* (1988) 45 Cal.3d 984, 1016.)

"The continuous-transaction doctrine … defines the duration of felony-murder liability, which may extend beyond the termination of the felony itself, provided that the felony and the act resulting in death constitute one continuous transaction. [Citation.]" (*People v. Cavitt* (2004) 33 Cal.4th 187, 208, italics omitted.) Where the felony and homicide are parts of one continuous transaction, the continuous-transaction doctrine both "aggravate[s] a killer's culpability," and also "make[s] complicit" a nonkiller. (*Id.* at p. 207.) The requirement is not, however, "a separate element of the charged crime but, rather, a clarification of the scope of an element. [Citation.]" (*Id*. at p. 203.)

"'Sua sponte instructions are required only '"'on the general principles of law relevant to the issues *raised by the evidence*. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the *facts* before the court, and which are necessary for the jury's understanding of the case.'"'"

[Citations.] In sum, there is no sua sponte duty to clarify the principles of the requisite relationship between the felony and the homicide without regard to whether the evidence supports such an instruction. [Citation.]" (*People v. Cavitt, supra,* 33 Cal.4th at p. 204; cf. *People v. Davis* (2005) 36 Cal.4th 510, 570; *People v. Monterroso* (2004) 34 Cal.4th 743, 766-767.) Because the evidence here raised no issue as to whether the felonies and homicide were parts of one continuous transaction, and, through CALCRIM Nos. 540A and 540B, the trial court had otherwise adequately explained the general principles of law requiring a determination whether the killing was committed in the perpetration of the felony or felonies, the trial court had no sua sponte duty to clarify the continuous-transaction requirement. (*People v. Cavitt, supra,* 33 Cal.4th at p. 204.) Appellants' failure to request amplification or clarification is fatal to their claim. (*Ibid*.; see *People v. Valdez* (2004) 32 Cal.4th 73, 113.)

We reject the notion that, by omitting the "one continuous transaction" requirement from CALCRIM Nos. 540A and 540B, the trial court somehow removed the factual issue from the jury's consideration, thereby committing error of constitutional magnitude. This was not a case in which, for example, jurors expressed confusion on the issue and the trial court responded by telling them that if they found a certain set of circumstances, then the homicide and the felony were parts of one continuous transaction. (See *People v. Sakarias* (2000) 22 Cal.4th 596, 623-625.) Proof that the act causing death and the felony or felonies were part of one continuous transaction is the means of establishing the requisite temporal relationship between the homicidal act and the underlying felony or felonies. (*People v. Cavitt, supra*, 33 Cal.4th at p. 193.) By informing the jury that, to find appellants guilty of first degree murder on a felony-murder theory, it had to find the act causing death was done *while* the perpetrator *was committing or attempting to commit* robbery, burglary, or carjacking, the instructions adequately conveyed, and required jurors to find, the requisite temporal connection.

(*People v. Bennett* (2009) 45 Cal.4th 577, 598; *People v. Cavitt, supra,* 33 Cal.4th at p. 203.)

Even assuming the continuous-transaction requirement was erroneously omitted from CALCRIM Nos. 540A and 540B, appellants suffered no prejudice: It was included in CALCRIM No. 730. Appellants say this did not cure the harm, because the phrase was not defined. Although the Bench Notes to CALCRIM No. 549 say the instruction is to be given if the evidence raises an issue whether the felony and homicide were part of one continuous transaction (Bench Notes to CALCRIM No. 549 (2007-2008) p. 346), we know of no authority requiring the trial court to define the phrase on its own motion.

"When a word or phrase '"is commonly understood by those familiar with the English language and is not used in a technical sense peculiar to the law, the court is not required to give an instruction as to its meaning in the absence of a request."' [Citations.] A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs* from its nonlegal meaning. [Citation.]" (*People v. Estrada* (1995) 11 Cal.4th 568, 574.) We are unaware of any case holding that "one continuous transaction" has a technical meaning peculiar to law, and appellants suggest no meaning of the phrase other than that which would be commonly understood. "If, in a particular case, it becomes apparent that the jury is in need of further definition, then of course such elaboration should be provided. But absent any indication that the jury in the present case was confused concerning the meaning of the phrase," we conclude it was not error to fail to define the term. (*People v. Hughes* (2002) 27 Cal.4th 287, 379 [rejecting claim "merely incidental" must be defined on court's own motion].)

**B. <u>CALCRIM No. 522</u>**

In the course of its instructions on premeditated murder, the trial court gave CALCRIM No. 522, to wit: "Provocation may reduce a murder from first to second degree. The weight and significance of the provocation, if any, are for you to decide. If you conclude that the defendant committed murder but was provoked, consider the

provocation in deciding whether the crime was first- or second-degree murder. Proof [*sic*] does not apply to a prosecution under a theory of felony murder."

Appellants contend this instruction may have misled jurors into believing they did not need to determine whether provocation reduced the homicide to second degree murder. They say jurors were not told why evidence of provocation was relevant to a determination of whether the crime was first or second degree murder, since CALCRIM No. 522 does not specifically state that provocation bears on whether the defendant killed without deliberation and premeditation; moreover, by permitting jurors to decide the significance of evidence of provocation, the instruction permits them to disregard evidence of provocation that raises a reasonable doubt as to premeditation and deliberation.

We need not address the merits of appellants' claim. As previously described, we can tell from the verdicts that jurors unanimously agreed appellants were guilty of first degree murder on at least a felony-murder theory. (*People v. Young* (2005) 34 Cal.4th 1149, 1175.) Any conceivable error in instructing on provocation to reduce the degree of murder was harmless. (See *People v. Seaton* (2001) 26 Cal.4th 598, 665.) Moreover, CALCRIM No. 522 is a pinpoint instruction that need not be given on a trial court's own motion (see *People v. Rogers* (2006) 39 Cal.4th 826, 877-880 [construing analogous CALJIC No. 8.73]), and appellants made no request for modification or clarification (see *People v. Parson* (2008) 44 Cal.4th 332, 352). Appellants' theory of defense was not provocation, but rather misidentification, and they do not now point to any *substantial* evidence of provocation justifying the instruction in the first instance. (See, e.g., *People v. Avila* (2009) 46 Cal.4th 680, 705-707; *People v. Carasi* (2008) 44 Cal.4th 1263, 1306-1308; *People v. Ward* (2005) 36 Cal.4th 186, 214-215.) They cannot complain that an instruction more favorable to them than the evidence warranted was given. (*People v. Mesa* (1932) 121 Cal.App. 345, 348; see *People v. Lee* (1999) 20 Cal.4th 47, 57.)

## II

## SENTENCING ERROR

In addition to consecutive terms of life without parole and life on counts 1 and 2, respectively, appellants were sentenced to consecutive determinate terms on count 9 (carjacking plus firearm enhancement), count 7 (robbery plus firearm enhancement), and count 6 (attempted carjacking plus firearm enhancement). They now contend that, because the jury found true robbery-murder and carjack-murder special circumstances, the sentences imposed for robbery and carjacking must be stayed. Respondent agrees that the sentence imposed for a felony relied on by the prosecution to secure a first degree felony-murder conviction, or a felony-murder special circumstance finding, must be stayed. He says the sentence imposed here was proper, however, because (1) the first degree murder conviction could properly rest on the theory of premeditation and deliberation; (2) the jury found three special circumstances, and the offense underlying each was a separate and distinct act, for each of which appellants harbored an independent intent and objective; and (3) only one special circumstance finding was necessary to support a sentence of life in prison without the possibility of parole and, since appellants were not charged with residential burglary, the burglary-murder special circumstance was available to support the sentence on count 1.

Section 654, subdivision (a) provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." "[S]ection 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor. [Citation.] If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for

more than one. [Citation.].… [¶] On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for the independent violations committed in pursuit of each objective even though the violations were parts of an otherwise indivisible course of conduct." (*People v. Perez* (1979) 23 Cal.3d 545, 551, fn. omitted.) "'The question of whether the acts of which defendant has been convicted constitute an indivisible course of conduct is primarily a factual determination, made by the trial court on the basis of its findings concerning the defendant's intent and objective in committing the acts. This determination will not be reversed on appeal unless unsupported by the evidence presented at trial.' [Citations.]" (*People v. Macias* (1982) 137 Cal.App.3d 465, 470.)

A number of cases have reached the conclusion that, when the act constituting the felony is the same act that makes the homicide first degree murder, section 654 permits conviction for both the underlying felony and the murder, but mandates that sentence on the underlying felony be stayed. (E.g., *People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Meredith* (1981) 29 Cal.3d 682, 695-696; *People v. Milan* (1973) 9 Cal.3d 185, 196-197; *People v. Boyd* (1990) 222 Cal.App.3d 541, 575-576; *People v. Guilford* (1984) 151 Cal.App.3d 406, 410-411; *People v. Mulqueen* (1970) 9 Cal.App.3d 532, 547-548.) In each of the cited cases, however, the victim of the underlying felony was also the person killed. By contrast, "[w]hen a defendant entertains a single principal objective during an indivisible course of conduct, he may nonetheless be punished for multiple convictions if during the course of that conduct he committed crimes of violence against different victims. [Citations.]" (*People v. Andrews* (1989) 49 Cal.3d 200, 225 (*Andrews*).)

In *People v. Young* (1992) 11 Cal.App.4th 1299 (*Young*), a case not cited by any party, the defendant, while fleeing in a stolen car following a robbery, struck and killed someone. He was convicted of first degree murder, with the special circumstance that the

murder was perpetrated in the commission of robbery or in the immediate flight after having committed robbery; robbery; and evading an officer, causing death. In addition to a sentence of life without the possibility of parole for the special-circumstance murder, he received a consecutive term for robbery. (*Id*. at p. 1302.) On appeal, he relied on several of the cases cited above to contend that the consecutive term for robbery was barred by section 654. Echoing *Andrews* and the authority it cited, the Court of Appeal disagreed, stating: "The cases cited by appellant are distinguishable because in those the robbery victim was the person killed. Under Penal Code section 654 as construed by the California Supreme Court, even if a defendant entertained a single principal objective during an indivisible course of conduct, he may be punished separately if during the course of that conduct he committed crimes of violence against different victims. [Citation.] [¶] Since appellant robbed one person, and in the commission of that robbery killed a different person, appellant may be punished for both robbery and murder. [Citations.]" (*Young*, *supra*, at pp. 1311-1312.)

We find *Young* persuasive. In the present case, the person killed (Harkleroad) was not the victim of the carjacking charged in count 9 (Ayers), the robbery charged in count 7 (Del Rosario), or the attempted carjacking charged in count 6 (Bolen and Del Rosario). Although appellants were sentenced to life in prison without the possibility of parole for committing the murder under particular circumstances, the acts of robbery, carjacking, and attempted carjacking were separate and distinct from the act of murder. The offenses may have comprised an indivisible course of conduct, but during the course of that conduct, appellants committed crimes of violence against different victims. The trial court so found, as evidenced by its statement that consecutive terms were justified

because the crimes involved separate acts of violence or threats of violence. Appellants were not doubly punished for their various criminal acts.[7]

**DISPOSITION**

The judgment is affirmed.

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Ardaiz, P.J.

WE CONCUR:

_____
Dawson, J.

_____
Poochigian, J.

[7] Since we conclude the sentences imposed on the substantive offenses need not be stayed, it follows that a stay of the attendant firearm enhancements is not required. (Cf. *People v. Bracamonte* (2003) 106 Cal.App.4th 704, 709, disapproved on other grounds in *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1130, fn. 8; *People v. Guilford, supra*, 151 Cal.App.3d at p. 411.)